

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jacqueline Asencio	Team: Team # 1	CCRB Case #: 201005890	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/28/2010 10:25 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 10/28/2011	EO SOL 10/28/2011	
Date/Time CV Reported Wed, 04/28/2010 10:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/04/2010 1:23 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Borden	20404	936227	075 PCT
2. SGT Damon Martin	04173	920558	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Damon Martin	Abuse: Sgt. Damon Martin entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM Matthew Borden	Abuse: PO Matthew Borden entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.SGT Damon Martin	Force: Sgt. Damon Martin pointed his gun at § 87(2)(b)	§ 87(2)(b)
D.SGT Damon Martin	Abuse: Sgt. Damon Martin threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint by phone with the Internal Affairs Bureau on behalf of herself and her son, § 87(2)(b) on April 28, 2010. The complaint was referred under log number 10-21428, and it was received at the CCRB on May 4, 2010. On April 28, 2010, at approximately 10:25pm, § 87(2)(b) was smoking in front of his home, located at § 87(2)(b) in Brooklyn, when Sgt. Damon Martin and PO Matthew Borden, both from the 75th Precinct, arrived at the scene. The following allegations resulted:

Allegation A-Abuse of Authority: Sgt. Damon Martin entered § 87(2)(b) in Brooklyn.

Allegation B-Abuse of Authority: PO Matthew Borden entered § 87(2)(b) in Brooklyn.

§ 87(2)(g)

Allegation C-Force: Sgt. Damon Martin pointed his gun at § 87(2)(b)

§ 87(2)(g)

Allegation D-Abuse of Authority: Sgt. Damon Martin threatened to arrest § 87(2)(b)

§ 87(2)(g)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a statement to the CCRB on May 25, 2010 (encl. 8a-8d). On April 28, 2010, at approximately 10:28pm, § 87(2)(b) exited his residence, located at § 87(2)(b) in Brooklyn, to smoke a cigarette. When § 87(2)(b) exited his home, he saw his brother, § 87(2)(b) and his stepbrother's cousins § 87(2)(b) and § 87(2)(b), standing on the stoop in front of the house socializing. Later in the interview, § 87(2)(b) stated that it was one of his cousins named § 87(2)(b) last name unknown, and § 87(2)(b) friend who were with him and § 87(2)(b). The investigation determined that the individuals who were with § 87(2)(b) outside the house were § 87(2)(b) and § 87(2)(b). § 87(2)(b) had a cigarette in his hand as he socialized, but § 87(2)(b) and § 87(2)(b) had nothing in their hands at the time.

All four men were outside socializing for approximately one minute when § 87(2)(b) decided to walk into the house. As § 87(2)(b) was about to walk into the home, a black Impala arrived at the scene and parked in front of § 87(2)(b)'s residence. At this point, § 87(2)(b) flicked the cigarette and started walking up the stairs leading to the front door of his home as a stocky black male plainclothes officer, identified through investigation as Sgt. Damon Martin from the 75th Precinct, and a young black male plainclothes officer, identified through investigation as PO Matthew Borden from the 75th Precinct, exited the car and started running toward the house.

§ 87(2)(b) entered the house, but § 87(2)(b) and § 87(2)(b) remained outside. § 87(2)(b) walked into the house, closed the front door, and locked it. Sgt. Martin and PO Borden did not give § 87(2)(b) any instructions as they ran toward the home. When § 87(2)(b) closed the door, Sgt. Martin kicked the door approximately three to four times and broke the hinge of the door. As Sgt. Martin kicked the door, § 87(2)(b) and § 87(2)(b) were standing at the end of the hallway leading away from the front door. When Sgt. Martin entered the home, he said, "Where is the little guy?" as he had his gun drawn. Sgt. Martin then pointed his gun at § 87(2)(b).

§ 87(2)(b)'s mother, § 87(2)(b), exited her bedroom that was located next to the hallway, and asked Sgt. Martin if he had a warrant. When Sgt. Martin did not respond, § 87(2)(b) told him to get out of the house. PO Borden stood behind Sgt. Martin and § 87(2)(b)'s stepbrother, § 87(2)(b), entered the hallway to see what was taking place. During this time, § 87(2)(b) and his mother were the only civilians in the hallway. As § 87(2)(b) told Sgt. Martin to get out of her house, Sgt. Martin told § 87(2)(b) "You need to stop smoking," and reached over § 87(2)(b)'s shoulder to grab a hold of § 87(2)(b)'s shoulder, but § 87(2)(b) moved back and told him that he was smoking a cigarette and showed the sergeant the pack of cigarettes.

Sgt. Martin grabbed the clothing on § 87(2)(b)'s left shoulder and pulled it toward him, but § 87(2)(b) moved away from him. § 87(2)(b) extended both her arms forward toward Sgt. Martin and told him that he could not grab § 87(2)(b). Sgt. Martin told § 87(2)(b) "Move. You need to move." § 87(2)(b) told him, "No, you need to get out of my house." Sgt. Martin pushed § 87(2)(b) on her right shoulder with his palms, and told her, "If you don't get out of the way, everyone here is going to get locked up." § 87(2)(b) stumbled backward, but she did not fall to the floor. When Sgt. Martin told PO Borden to call for an additional unit, § 87(2)(b) called 911. When the additional officers arrived, § 87(2)(b) and § 87(2)(b) were placed under arrest. As § 87(2)(b) and § 87(2)(b) were being placed in handcuffs, Sgt. Martin and PO Borden exited the house. § 87(2)(b) was not placed under arrest.

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a statement to the CCRB on May 25, 2010 (encl. 9a-9e). § 87(2)(g)
§ 87(2)(b) and § 87(2)(b) were inside her bedroom, located next to the hallway on the first floor, when she heard banging coming from the front door of her house. § 87(2)(b) exited her bedroom with her cell phone in her hand into the hallway and saw her sons, § 87(2)(b) and § 87(2)(b) running into the house with Sgt. Martin behind them with his gun drawn saying, "Where is the

little one?" § 87(2)(b) also exited the bedroom and § 87(2)(b)'s cousin, § 87(2)(b) who was upstairs at the time, came down the stairs to see what was happening.

§ 87(2)(b) stood in between § 87(2)(b) and Sgt. Martin, facing the sergeant as § 87(2)(b) and § 87(2)(b) stood on either side of her. During this time, § 87(2)(b) noticed PO Borden standing behind Sgt. Martin. Sgt. Martin placed his gun in his holster and told § 87(2)(b) to move. § 87(2)(b) told Sgt. Martin, "I'm not moving. What is going on? First of all, if you have any business coming in here, you knock on my door. You just don't come busting into my door. This is the second time already. You cannot keep doing this." Sgt. Martin asked § 87(2)(b) "Do you know what your kids are doing outside?" When § 87(2)(b) asked Sgt. Martin what he meant, Sgt. Martin told § 87(2)(b) "They are smoking." Sgt. Martin reached over § 87(2)(b)'s arm in order to grab § 87(2)(b). As Sgt. Martin reached over her shoulder, he pushed her back with his body and told her that he had to get by her. Later in the interview, § 87(2)(b) stated that Sgt. Martin pushed her out of the way by pushing her shoulder back. § 87(2)(b) mentioned that when Sgt. Martin pushed her, it was not to cause her fall down. She received no injury from the push. § 87(2)(b) was not sure if Sgt. Martin managed to get a hold of § 87(2)(b) as he reached for him.

§ 87(2)(b) and § 87(2)(b) stood on either side of § 87(2)(b) blocking Sgt. Martin from grabbing § 87(2)(b) and cursed at the sergeant saying, "Get the fuck out of my house." § 87(2)(b) was also cursing at Sgt. Martin telling him, "This is the second fucking time you are doing this." § 87(2)(b) told Sgt. Martin again to leave and told him that he had no right "busting" into her house. Sgt. Martin told § 87(2)(b) that they will pay for the door and told her specifically that he was going to call "his people" because, "All of you are going to be arrested." When § 87(2)(b) told Sgt. Martin that she was going to call 911, the sergeant stopped trying to grab § 87(2)(b) and exited the house. § 87(2)(b) then noticed that the officers had broken a piece of wood on the frame of her front door when they had entered the home.

Witness: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a statement to the CCRB on May 25, 2010 (encl. 10a-10d). § 87(2)(b) was upstairs on the second floor when he heard banging on the front door of the house. As § 87(2)(b) went downstairs, he saw Sgt. Martin in the hallway with his gun drawn and pointed at § 87(2)(b) as she stood in between Sgt. Martin and § 87(2)(b). When § 87(2)(b) reached the last third step to the first floor, he saw Sgt. Martin placing his gun in his holster. § 87(2)(b) heard § 87(2)(b) tell Sgt. Martin that he had no right to enter her house. He did not hear if Sgt. Martin responded to § 87(2)(b) or if § 87(2)(b) said anything to the sergeant. Sgt. Martin did not say anything to § 87(2)(b). Sgt. Martin did speak to § 87(2)(b) and her son for several minutes, but § 87(2)(b) did not recall their conversation. After the conversation, Sgt. Martin left the house.

Witness: § 87(2)(b)

- § 87(2)(b) provided a phone statement to the CCRB on June 16, 2010 (encl. 11a). He stated the following:

Phone Statement

§ 87(2)(b) was in § 87(2)(b)'s bedroom on the computer when he heard a noise coming from the front door of the house. § 87(2)(b) looked in the hallway and observed Sgt. Martin and PO Borden. Sgt. Martin tried to grab § 87(2)(b) as he was reaching over § 87(2)(b) and ended up pushing her. § 87(2)(b) told Sgt. Martin, "Oh, you pushed me. Get out of my house." Sgt. Martin had his gun drawn and § 87(2)(b) told him to get out of the house and asked him for a warrant. During the commotion, § 87(2)(b) did not recall what § 87(2)(b) said, but heard when Sgt. Martin said, "Everyone that's here, I'm going to lock all you up for interfering with an investigation."

Attempts to Contact Witness

§ 87(2)(b) stated that his brother, § 87(2)(b) was present during the incident. On May 11, May 13, May 14, and May 17, 2010, the undersigned called § 87(2)(b) at his mother's phone number and left him messages asking him to contact the undersigned. On June 16, June 21, and June 28, 2010, the undersigned called § 87(2)(b) at an alternate phone number provided by § 87(2)(b) and left him additional messages to contact the investigator. On May 11 and May 14, 2010, the undersigned mailed "please call" letters to § 87(2)(b). As of this date, the letters sent to § 87(2)(b) have not been returned by the United States Postal Service. § 87(2)(b) never contacted the investigator in regards to this complaint.

NYPD Statements:

Subject Officer: SGT. DAMON MARTIN

- *Sgt. Martin is a § 87(2)(b)-year-old black male, height 5'11", weight 230 pounds, black hair and brown eyes.*
- *On April 28, 2010, Sgt. Martin was assigned to the SNEU team. He worked in plainclothes with PO Matthew Borden from 4:00pm to 12:00am in an unmarked vehicle.*

Memo Book

Sgt. Martin noted in his memo book that he was unable to stop his vehicle when he observed a defendant in possession of a marijuana cigar in public and plain view at 10:30pm. When he returned to the location, he observed another defendant pass the marijuana cigar to § 87(2)(b) who fled into § 87(2)(b). Sgt. Martin noted that § 87(2)(b) was pursued for the misdemeanor through the door of location. Sgt. Martin noted that § 87(2)(b) along with a heavyset tall Hispanic male, was swearing at the scene (encl. 13a-13c).

CCRB Testimony

Sgt. Martin provided a statement to the CCRB on October 21, 2010 (encl. 14a-14b). On April 28, 2010, Sgt. Martin and PO Borden were on patrol when Sgt. Martin observed § 87(2)(b) § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) in Brooklyn smoking what he believed was marijuana. The car was approximately six feet away from where the three men were sitting on the front steps of the house and the area was lit well. The officers could not stop their vehicle immediately because of the traffic and drove back to the location since Sgt. Martin was suspicious and both he and PO Borden wanted to investigate what they observed.

Sgt. Martin and PO Borden parked their vehicle a few houses away from § 87(2)(b) and exited the car. As they approached the house, Sgt. Martin smelled marijuana and saw either § 87(2)(b) or § 87(2)(b) pass a brown marijuana cigar to § 87(2)(b). Once Sgt. Martin saw the marijuana and smelled the marijuana, he told § 87(2)(b) "Police." At this point, § 87(2)(b) who

had the marijuana cigar in his hand, ran into § 87(2)(b) Sgt. Martin ran in pursuit with PO Borden following behind him. Sgt. Martin ran into the house since he was in pursuit of an individual who had committed a misdemeanor. Sgt. Martin denied that he or PO Borden had their guns drawn as they chased § 87(2)(b) into the house.

Once § 87(2)(b) was inside the house, he tried to slam the door closed but Sgt. Martin pushed the door open with his shoulder. § 87(2)(b) then ran into the first floor apartment and Sgt. Martin lost sight of him. § 87(2)(b) and § 87(2)(b) remained outside the house. Sgt. Martin ran after § 87(2)(b) and was met with § 87(2)(b)'s family members, including § 87(2)(b) who were blocking Sgt. Martin from entering the apartment. Sgt. Martin instructed § 87(2)(b) to "come out," but he refused by not complying. At this point, Sgt. Martin asked § 87(2)(b) to tell § 87(2)(b) to exit the apartment, but she would not comply. § 87(2)(b) was angry and told Sgt. Martin that this was the second time the front door was damaged. Sgt. Martin denied that he had any physical contact with § 87(2)(b) PO Borden did not say anything during this time. Either § 87(2)(b) or § 87(2)(b) told Sgt. Martin that the "cops are going to get fucked next time." Sgt. Martin did not respond to the comment and asked them to bring § 87(2)(b) out of the house, but they refused. Sgt. Martin told the family that he would take care of fixing the door and left the house. § 87(2)(b) and either § 87(2)(b) or § 87(2)(b) could have been placed under arrest for disorderly conduct, but Sgt. Martin did not tell them of the fact since he did not want to make the situation worse. § 87(2)(b) never exited the apartment while Sgt. Martin was present inside the house.

Subject Officer: PO MATTHEW BORDEN

- PO Borden is a § 87(2)(b)-year-old black male, height 6'1", weight 160 pounds, black hair and brown eyes.
- On April 28, 2010, PO Borden was assigned to the SNEU team. He worked in plainclothes with Sgt. Damon Martin from 4:00pm to 12:00am in unmarked vehicle.

Memo Book

PO Borden noted in his memo book he arrested § 87(2)(b) and § 87(2)(b) at § 87(2)(b) at 10:30pm. He noted that he did not apprehend § 87(2)(b) (encl. 15a-15c).

OLBS Worksheets and Complaint Report

PO Borden prepared arrest reports and a complaint report for § 87(2)(b) and § 87(2)(b) on April 28, 2010 (encl. 16a-16h). He wrote that § 87(2)(b) and § 87(2)(b) were observed smoking a marijuana cigar in plain view. An unapprehended perpetrator fled with the marijuana cigar and was not recovered.

CCRB Testimony

PO Borden provided a statement to the CCRB on November 10, 2010 (encl. 17a-17b). PO Borden and Sgt. Martin were on patrol when they observed § 87(2)(b) § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) allegedly smoking marijuana. PO Borden thought that the men were smoking marijuana because of the way they passed the marijuana cigar back and forth and how they "puffed it out." Since they were not exactly sure, the officers drove back to the location approximately five minutes later and parked the vehicle away from § 87(2)(b) and approached the house on foot.

As PO Borden and Sgt. Martin approached the house, PO Borden smelled the marijuana and saw either § 87(2)(b) or § 87(2)(b) pass the marijuana cigar, which PO Borden was unable to describe, to § 87(2)(b) When the officers approached the men, § 87(2)(b) ran into the house with

the marijuana cigar and closed the door. § 87(2)(b) and § 87(2)(b) remained outside. The officers pursued § 87(2)(b) since he had run with the marijuana cigar into the residence. PO Borden did not recall if he pursued § 87(2)(b) first or if Sgt. Martin entered the house first. The officers tried to open the door but found it locked so they broke the door but PO Borden did not recall if he or Sgt. Martin broke the door. Before entering the house, PO Borden and Sgt. Martin did not have their guns drawn or pointed at § 87(2)(b).

Inside the house, PO Borden and Sgt. Martin went into the hallway and were met with § 87(2)(b) and approximately two or three other civilians in the back of the hallway. None of the other individuals were § 87(2)(b) § 87(2)(b) told the officers, “What are you doing in my house? I’m tired of this. This is the second time this has happened.” As § 87(2)(b) spoke to the officers, PO Borden was standing approximately two to three arm lengths away from her. PO Borden did not recall if he was standing closer to § 87(2)(b) or if Sgt. Martin was standing closer to her. PO Borden did not recall if Sgt. Martin said anything to § 87(2)(b) or if he or Sgt. Martin threatened to arrest her. PO Borden stated that § 87(2)(b) could not be placed under arrest for any crime. Because the hallway was “tight”, PO Borden and Sgt. Martin exited the house. The officers exited the house without placing § 87(2)(b) under arrest or recovering the marijuana cigar.

NYPD Documents

- **Sprint Print-Out**

On April 28, 2010, at approximately 10:30pm, § 87(2)(b) called IAB and stated that an officer broke down her door. At 10:31pm, the SNEU sergeant radioed an arrest at the location (encl. 18a-18c).

- **Stop, Question, and Frisk Log**

The April 28, 2010 log yielded negative results for § 87(2)(b) (encl. 19a-19d).

- **Roll Call**

The roll call confirmed the officers’ statements concerning their tours and assignments (encl. 20a-20b).

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of February 10, 2011 with regard to the incident (encl. 23a).

Civilians Criminal History

- As of February 11, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) and § 87(2)(b) (encl. 21a-21d).

Civilian CCRB History

- § 87(2)(b)

Subject Officers CCRB Histories

- Sgt. Damon Martin has been a member of the service for thirteen years and there are seven substantiated CCRB allegations against him (encl. 3a-3c). In CCRB case number 200612091, Sgt. Martin was found not guilty for entering § 87(2)(b) home. Sgt. Martin was also found not guilty of searching § 87(2)(b). In CCRB case number 200616696, Sgt. Martin

received no disciplinary action for questioning § 87(2)(b). In CCRB case number 200814508, the NYPD has yet to recommended a disposition for the stop, threat of force, strip-search, and arrest of § 87(2)(b).

- PO Matthew Borden has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 4a).

Conclusion

Identification of Subject Officers

- Since Sgt. Martin and PO Borden acknowledged that they pursued § 87(2)(b) into the house, allegations A and B were pled against them. Since it was alleged that the same officer who broke the door had also pointed his gun at § 87(2)(b) and had threatened to arrest § 87(2)(b) allegations C and D were pled against Sgt. Martin since he admitted that he had pushed open the door.

Allegations Not Pled

§ 87(2)(b) alleged that Sgt. Martin pushed her shoulder as she stood between him and her son.

§ 87(2)(b) testified that Sgt. Martin did not push her to cause her injury, but as a method to get her out of the way. § 87(2)(g)

§ 87(2)(b) alleged that when Sgt. Martin and PO Borden gained entry into her home, they damaged her front door. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A-Abuse of Authority: Sgt. Damon Martin entered § 87(2)(b) in Brooklyn.

Allegation B-Abuse of Authority: PO Matthew Borden entered § 87(2)(b) in Brooklyn.

Sgt. Martin and PO Borden testified that as they approached § 87(2)(b) on foot they smelled marijuana coming from the location and observed when an individual passed a marijuana cigar to § 87(2)(b). Sgt. Martin testified that when he and PO Borden identified themselves as police, § 87(2)(b) ran into the house with the marijuana cigar. Once § 87(2)(b) fled, Sgt. Martin and PO Borden pursued him into his home. Sgt. Martin and PO Borden stated that they pursued § 87(2)(b) inside the house since he had committed a misdemeanor. The officers also mentioned that at the time § 87(2)(b) fled, he still had evidence of his crime in his hand.

Kamins explains that “the police can enter an individual’s home without a warrant if they enter in ‘hot pursuit’ of the defendant. Under this theory, a suspect may not thwart an otherwise proper arrest, set in motion in a public place, by escaping into his residence. “The Appellate Division held that the warrantless entry into the defendant’s home was justified as a ‘continuation of the uninterrupted pursuit of the defendant’ (encl. 1a-1b) § 87(2)(g)

§ 87(2)(g)

Allegation C-Force: Sgt. Damon Martin pointed his gun at § 87(2)(b)

PO Borden denied that he or Sgt. Martin had their firearms drawn or pointed at § 87(2)(b) and Sgt. Martin denied to have engaged in such actions. § 87(2)(b) and his family testified that Sgt. Martin did have his firearm drawn. § 87(2)(g)

§ 87(2)(b) *PD v. Gliner* established that “the Department permits an officer broad discretion to display his weapon whenever he feels that his life or the life of another is endangered” (encl. 2a-2t). § 87(2)(g)

Allegation D-Abuse of Authority: Sgt. Damon Martin threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that as Sgt. Martin tried to grab § 87(2)(b) he told her to move out of the way and informed her that she could be placed under arrest. PO Borden did not recall if Sgt. Martin told § 87(2)(b) that she could be arrested and stated that § 87(2)(b) could not be placed under arrest for any crime. Sgt. Martin testified that when he spoke to § 87(2)(b) she was angry but he denied threatening to arrest her. Sgt. Martin did not mention that § 87(2)(b) was cursing at him during his CCRB interview, but he noted it in his memo book. Furthermore, Sgt. Martin testified that either § 87(2)(b) or § 87(2)(b) was cursing at him while he was at the hallway which is consistent with § 87(2)(b)'s statement that § 87(2)(b) and § 87(2)(b) were swearing at the sergeant. § 87(2)(b) and her family were angry that police officers had entered their home since it had happened in a previous incident. § 87(2)(b) testified that Sgt. Martin told them that they could be placed under arrest for interfering with an investigation, which is consistent with Sgt. Martin and PO Borden's statements since they testified that when they entered the house, § 87(2)(b) was hiding in the residence and his family was blocking the way. § 87(2)(b) testified that he did hear Sgt. Martin speaking to § 87(2)(b) but he did not recall their conversation. § 87(2)(g)

Team: One

:

Investigator: _____

Signature

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Date

Supervisor: _____

Title/Signature

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Date

Reviewer: _____

Title/Signature

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Date

Reviewer: _____

Title/Signature

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Date